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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/760,168

01/16/2004

Travis M. Perkins

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09/27/2006

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 09/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/760,168	<b>Applicant(s)</b> PERKINS ET AL.	
	<b>Examiner</b> Jennifer E. Novosad	<b>Art Unit</b> 3634	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 August 2006.  
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,6 and 8-46 is/are pending in the application.  
 4a) Of the above claim(s) 21-46 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-4,6,8-12 and 17-20 is/are rejected.  
 7) ☒ Claim(s) 13-16 is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 21 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This final Office action is in response to the amendment filed August 21, 2006 by which claims 1, 6, 8, and 9 were amended and claims 5 and 7 were deleted.

#### ***Election/Restriction***

During a telephone discussion, between the examiner and Mr. Robert Judd, on May 23, 2006, claims 18-20 were discussed and the examiner agreed that claims 18-20 would be examined with the claims of Group I, i.e., claims 1-4, 6, and 8-17.

Thus, claims 21-46 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 12, 2006.

#### ***Drawings***

The drawing containing corrections were received on August 21, 2006. These drawings are approved.

***Claim Objections***

Claim 8 is objected to because in line 2, "extend" should be changed to --extends--.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,393,877 (Church '877) in view of U.S. Design Patent No.D470,395 (Valiulis et al. '395).

Church '877 discloses a slot track comprising a plurality of slots (36) with each having at opposite undercut sidewalls (34) wherein adjacent slots form a slat (unnumbered - between 36 and 34 in Figure 1) having a face with edges; a bracket having a support portion and first and second J-shaped hooks (26, 30, and 28, 32) that are inserted against edges of the slots such that each hook has a first leg (26 or 28) and a second leg (30, 32) extending in opposing directions.

The claims differ from Church '877 in requiring: (a) the J-shaped hooks to extend in the same direction (claim 1); (b) two or more vertically spaced slot tracks such that a plurality of brackets are spaced vertically on a device to support the device on the slot tracks (claim 9); (c) the tracks having a predetermined width (claim 10) of 6 inches and are mounted 18 inches apart (claim 11); and (d) the brackets can be inserted into the slot without pivoting the brackets.

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*With respect to (a)*, Valiulis et al. '395 show a bracket for use with a slatwall (note preamble), whereby the bracket has a first and a second J-shaped hook, each J-shaped hook has a support portion, a first leg extending substantially perpendicular to the support portion, and a second leg extending distal from the first leg in a direction generally parallel to the support portion, such that the hooks extend in the same direction.

*Thus*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have placed a bracket, as shown by Valiulis et al. '395 on the slot track disclosed by Church '877, whereby the J-shaped hooks of Valiulis et al. '395 would hooked over edge of the slats, for increased securement and stability of the bracket.

*With respect to (b)*, Church '877 discloses the slot track as advanced above whereby a plurality of brackets (see Figure 12) are used. Although Church '877 shows only one slot track, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have provided a plurality of tracks such that the brackets could be attached to a device to thereby the device from the spaced slot tracks, thereby increasing securement and stability of the device.

*With respect to (c)*, although the references are silent as to the specified dimensions, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have provided the tracks with such dimensions for increased storage capacity and capabilities.

*With respect to (d)*, Church '877 discloses the track as advanced above whereby the bracket is slid into the slots (see Figure 1). *Thus*, it would have been obvious to one of ordinary

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skill in the art at the time the invention was made that the brackets would not be pivoted, but rather slid, thereby increasing ease in assembly.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Church '877 in view of Valiulis et al. '395 as applied to claims 1-3 and 9-12 above, and further in view of U.S. Patent No. 4,694,965 (Parnell '965).

The claim differs from the above references in requiring the top and bottom edges of the slot track to be tapered between a front and rear surface.

Parnell '965 teaches tapered top and bottom edges (50a, 46n).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the slot track of Church '877 with tapered edges, as taught by Parnell '965, for increased aesthetic appeal and appearance.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4, 6, and 17-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11, 12, and 24-34 of U.S. Patent No. 6,811,043. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art at the time the invention was made that the J-shaped hooks of the bracket would interact with the T-shaped slots as called for in the claims, thereby increasing securement and stability therebetween.

#### ***Allowable Subject Matter***

Claims 13-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment reciting the first and second legs of the J shaped hooks (see lines 14-17 of claim 1). It is noted that the recitation added to claim 1 is substantially the same as the recitation present in original claim 5, which has been canceled. *However*, the cancellation of claim 5 and the addition of such recitation into claim 1 necessitated the new grounds of rejection since this amendment changes the scope of the claim 1. *In particular*, note that previously claim 1 was rejected under

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35 USC § 102 and claim 5 was rejected under 35 USC § 103, whereas now claim 1 is rejected under 35 USC § 103.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

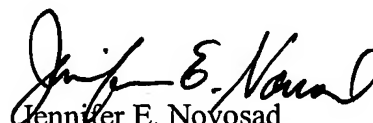
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Jennifer E. Novosad  
Primary Examiner  
Art Unit 3634

September 22, 2006

